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DOH 20-01

## SUSPENSION

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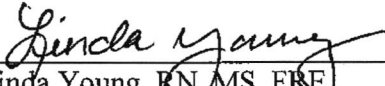
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4. Licensee is hereby notified that any practice of or holding herself out as a nurse during the terms of this Suspension is a violation of SDCL § 36-9-68(5).

5. This action is reportable discipline and will be published in the Board's newsletter and posted on its website and reported into the National Practitioner Data Bank (NPDB) as required by law.

Dated this 15<sup>th</sup> day of July, 2020.

SOUTH DAKOTA BOARD OF NURSING

  
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Linda Young, RN, MS, FRE  
Executive Director

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**DOH 20-01**

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

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Pursuant to SDCL 1-26-25, the Board issues its final decision in writing through these written Findings of Fact and Conclusions of Law, as well as a separate written Order issued pursuant to these Findings of Fact and Conclusions of Law.

Being charged with the statutory obligation to protect the public health, safety, and welfare set forth in ARSD 20:48:04:01, *et al.*, including the protection of the public from unsafe nursing practices and practitioners, the Board hereby makes the following:

#### **FINDINGS OF FACT**

1. Misty Brech, LPN ("Licensee") is licensed to practice as a nurse in the State of South Dakota under license number P011590.
2. The Board mandated that Licensee participate in the South Dakota Health Professionals Assistance Program (HPAP) on February 17, 2017, based on her termination from Palisade Manor on November 4, 2016, related to Licensee's administration of controlled substances and suspected diversion of controlled substances. Licensee had also been charged with third degree burglary and misrepresentation to obtain controlled substance charges.
3. Licensee signed a Participation Agreement with HPAP on November 28, 2016. Her Participation Agreement included a completion date of November 29, 2019, assuming Licensee complied with the terms of her Participation Agreement and there was no need for continued participation beyond that date.
4. In early 2017, HPAP personnel received negative employer reports regarding Licensee.
5. In June 2017, HPAP personnel learned that Licensee had been charged with a DWI in Minnesota, along with child endangerment and a traffic violation under Minnesota's open bottle law.

6. Licensee entered into an agreement with HPAP to voluntarily refrain from practicing as a licensed medical professional in South Dakota or any other state, pending the outcome of an HPAP evaluation on June 12, 2017.

7. On March 13, 2018, HPAP and Licensee agreed to lift the voluntary refrain from practice with changes to her Participation Agreement, including extending her participation to three years of full compliance with her Participation Agreement.

8. On March 31, 2018 and April 30, 2018, HPAP personnel notified the Board of Licensee's non-compliance with her HPAP Participation Agreement, stating Licensee did not UA when selected and requested.

9. On June 28, 2018, the Board issued Licensee a Letter of Concern based on Licensee's non-compliance with her HPAP Participation Agreement.

10. In June 2019, Licensee's employer, Palisades Healthcare, reported that Licensee was texting several fellow employees, who felt harassed by Licensee's persistent behavior.

11. On September 18, 2019, Palisades Healthcare in Canton, South Dakota contacted HPAP personnel and notified them that Licensee had documented completion of dressing on a resident on September 13, 2019, but on September 18, 2019 the wound was infested to the point the resident had to be admitted to the hospital with cellulitis. There were maggots in the wound.

12. Licensee signed a voluntary refrain agreement on September 19, 2019, pending the outcome of an HPAP risk evaluation.

13. On September 20, 2019, Palisades Healthcare, through its administrator, Lourdes Parker, RN, terminated Licensee's employment with Palisades Healthcare. Parker reported

concern with Licensee's threats and harassment to Palisades Healthcare employees to the point Parker had made a report to the police.

14. Parker and Palisades Healthcare staff concluded that Licensee had falsely documented care and such care provided amounted to abuse or neglect of a resident.

15. The Board finds that Licensee documented providing care to a resident that she did not provide and that such false documentation resulted in harm to a resident under her care.

16. HPAP's Evaluation Committee considered Licensee's continued participation in HPAP on October 17, 2019, and decided to unsuccessfully discharge Licensee from HPAP.

17. Pursuant to SDCL 36-2A-11, HPAP personnel notified the Board on October 17, 2019, of Licensee's unsuccessful discharge from HPAP.

18. SDCL 36-2A-11 provides as follows: Termination of participation in program-- Report to board. The health professionals' assistance evaluation committee may terminate a person's participation in the program based upon:

- (1) Failure to cooperate or comply with the individualized participation agreement; or
- (2) Violation of the practice act of the applicable health care profession during participation in the program.

The evaluation committee shall report terminations to the applicable participating board.

19. The Board finds that Licensee's violations of her HPAP participation agreement amount to unprofessional conduct.

20. Jessica Meyer with Palisade Healthcare Center also submitted a written complaint to the Board regarding Licensee on September 26, 2019, regarding the same incidents addressed through HPAP.

21. The Board's investigative representative, Francie Miller, notified Licensee of the complaint and met with Licensee on November 12, 2019, for an informal interview to address the allegations in the complaint.

22. Licensee has been provided her due process rights to respond to the complaint and proceed with a formal, contested hearing before an Administrative Law Judge and the full Board.

### **CONCLUSIONS OF LAW**

1. Pursuant to SDCL § 36-9-69, it shall be necessary to prove in any prosecution for any violation of this chapter only a single act prohibited by law or a single holding out or an attempt without proving a general course of conduct in order to constitute a violation.

2. Based upon the above facts, the Board concludes that Licensee has engaged in conduct in violation of SDCL § 36-9-49(5), in that Licensee has negligently, willfully, or intentionally acted in a manner inconsistent with the health or safety of a person entrusted to the applicant's or licensee's care.

3. Based upon the above facts, the Board concludes that Licensee has engaged in conduct in violation of SDCL § 36-9-49(10), in that Licensee engaged in unsafe nursing practice, substandard care, or unprofessional or dishonorable conduct.

4. In the alternative, based upon the above facts, the Board concludes Licensee's physical or mental condition endangers the health or safety of a person who is or will be entrusted to the licensee's or applicant's care pursuant to SDCL § 36-9-49.1.

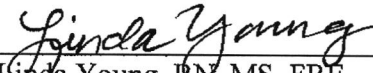
5. Pursuant to SDCL § 36-9-1.1: "It is the responsibility of the State to safeguard life, health and the public welfare, and to protect citizens from unauthorized, unqualified and

improper application of nursing education programs and nursing practices.” To achieve this responsibility, “regulatory authority shall be vested in the South Dakota Board of Nursing.”

6. In order to fulfill its statutory directive to protect the public for violations of the Nurse Practice Act, the Board hereby concludes that suspension of Licensee’s license is necessary to adequately protect the public welfare and that a separate Order revoking Licensee’s license shall be entered based on these Findings of Fact and Conclusions of Law.

Dated this 15<sup>th</sup> day of July, 2020.

SOUTH DAKOTA BOARD OF NURSING

  
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Linda Young, RN, MS, FRE  
Executive Director